

# **AMERICAN INSTITUTE OF CERTIFIED PLANNERS**

## **ETHICAL GUIDELINES**

### **AICP Ethical Principles in Planning** **(As Adopted May 1992)**

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community. Section A presents what we hold to be necessary elements in such a view.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants. Section B presents specific standards.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism. These are presented in Section C.

Section D is the translation of the principles above into the AICP Code of Ethics and Professional Conduct. The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

**A. The planning process must continuously pursue and faithfully serve the public interest.**

**Planning Process Participants should:**

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

**B. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.**

**Planning Process Participants should:**

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker (see also Advisory Ruling Number 2, "Conflicts of Interest When a Public Planner Has a Stake in Private Development" under Section D)
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;

6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome (see also Advisory Ruling Number 4: "Honesty in the Use of Information" under Section D);
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations (see also Advisory Ruling Number 1: "Sexual Harassment").

**C. APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.**

**APA Members who are practicing planners :**

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to

- voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
  6. Accurately represent the qualifications, views, and findings of colleagues;
  7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
  8. Share the results of experience and research which contribute to the body of planning knowledge;
  9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
  10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
  11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
  12. Systematically and critically analyze ethical issues in the practice of planning.  
(See also Advisory Ruling Number 3: ``Outside Employment or Moonlighting").

# **AICP Code of Ethics and Professional Conduct**

## **(Adopted October 1978--as amended October 1991)**

This Code is a guide to the ethical conduct required of members of the American Institute of Certified Planners. The Code also aims at informing the public of the principles to which professional planners are committed. Systematic discussion of the application of these principles, among planners and with the public, is itself essential behavior to bring the Code into daily use.

The Code's standards of behavior provide a basis for adjudicating any charge that a member has acted unethically. However, the Code also provides more than the minimum threshold of enforceable acceptability. It sets aspirational standards that require conscious striving to attain.

The principles of the Code derive both from the general values of society and from the planning profession's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so also do the principles of this Code sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code. Formal procedures for filing of complaints, investigation and resolution of alleged violations and the issuance of advisory rulings are part of the Code.

### **The Planner's Responsibility to the Public**

**A. A planner's primary obligation is to serve the public interest. While the definition of the public interest is formulated through continuous debate, a planner owes allegiance to a conscientiously attained concept of the public interest, which requires these special obligations:**

- 1) A planner must have special concern for the long range consequences of present actions.
- 2) A planner must pay special attention to the interrelatedness of decisions.
- 3) A planner must strive to provide full, clear and accurate information on planning issues to citizens and governmental decision-makers.
- 4) A planner must strive to give citizens the opportunity to have a meaningful impact on the development of plans and programs. Participation should be broad enough to include people who lack formal organization or influence.
- 5) A planner must strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons, and must urge the alteration of policies, institutions and decisions which oppose such needs.
- 6) A planner must strive to protect the integrity of the natural environment.

- 7) A planner must strive for excellence of environmental design and endeavor to conserve the heritage of the built environment.

## **The Planner's Responsibility to Clients and Employers**

### **B. A planner owes diligent, creative, independent and competent performance of work in pursuit of the client's or employer's interest. Such performance should be consistent with the planner's faithful service to the public interest.**

- 1) A planner must exercise independent professional judgment on behalf of clients and employers.
- 2) A planner must accept the decisions of a client or employer concerning the objectives and nature of the professional services to be performed unless the course of action to be pursued involves conduct which is illegal or inconsistent with the planner's primary obligation to the public interest.
- 3) A planner shall not perform work if there is an actual, apparent, or reasonably foreseeable conflict of interest, direct or indirect, or an appearance of impropriety, without full written disclosure concerning work for current or past clients and subsequent written consent by the current client or employer. A planner shall remove himself or herself from a project if there is any direct personal or financial gain including gains to family members. A planner shall not disclose information gained in the course of public activity for a private benefit unless the information would be offered impartially to any person.
- 4) A planner who has previously worked for a public planning body should not represent a private client, for one year after the planner's last date of employment with the planning body, in connection with any matter before that body that the planner may have influenced before leaving public employment.
- 5) A planner must not solicit prospective clients or employment through use of false or misleading claims, harassment or duress.
- 6) A planner must not sell or offer to sell services by stating or implying an ability to influence decisions by improper means.
- 7) A planner must not use the power of any office to seek or obtain a special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge.
- 8) A planner must not accept or continue to perform work beyond the planner's professional competence or accept work which cannot be performed with the promptness required by the prospective client or employer, or which is required by the circumstances of the assignment.
- 9) A planner must not reveal information gained in a professional relationship which the client or employer has requested to be held inviolate. Exceptions to this requirement of non-

disclosure may be made only when (a) required by process of law, or (b) required to prevent a clear violation of law, or (c) required to prevent a substantial injury to the public. Disclosure pursuant to (b) and (c) must not be made until after the planner has verified the facts and issues involved and, when practicable, has exhausted efforts to obtain reconsiderations of the matter and has sought separate opinions on the issue from other qualified professionals employed by the client or employer.

## **The Planner's Responsibility to the Profession and to Colleagues**

**C. A planner should contribute to the development of the profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities. A planner should treat fairly the professional views of qualified colleagues and members of other professions.**

- 1) A planner must protect and enhance the integrity of the profession and must be responsible in criticism of the profession.
- 2) A planner must accurately represent the qualifications, views and findings of colleagues.
- 3) A planner who reviews the work of other professionals must do so in a fair, considerate, professional and equitable manner.
- 4) A planner must share the results of experience and research which contribute to the body of planning knowledge.
- 5) A planner must examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and must not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- 6) A planner must contribute time and information to the professional development of students, interns, beginning professionals and other colleagues.
- 7) A planner must strive to increase the opportunities for women and members of recognized minorities to become professional planners.
- 8) A planner shall not commit an act of sexual harassment.

## **The Planner's Self-Responsibility**

**D. A planner should strive for high standards of professional integrity, proficiency and knowledge.**

- 1) A planner must not commit a deliberately wrongful act which reflects adversely on the planner's professional fitness.
- 2) A planner must respect the rights of others and, in particular, must not improperly discriminate against persons.
- 3) A planner must strive to continue professional education.

- 4) A planner must accurately represent professional qualifications, education and affiliations.
- 5) A planner must systematically and critically analyze ethical issues in the practice of planning.
- 6) A planner must strive to contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.



# **AICP**

## **Procedures Under the Code of Ethics and Professional Conduct**

1. Informal Advice and Formal Advisory Rulings: Any person may seek informal advice on ethics from the Executive Director of the AICP or from the Chair of a Chapter Professional Development Committee. Such advice shall not be binding upon the AICP.

Any person may file a written request with the Executive Director of the AICP for a formal advisory ruling on the propriety of any professional planner conduct. The request should contain sufficient facts, real or hypothetical, to permit a definitive opinion. If appropriate, the Executive Director shall then prepare and furnish a written formal advisory ruling to the inquiring party. This ruling may be published if endorsed by the AICP Ethics Committee as commentary on the Code and a guide to its application. Published rulings, however, shall not include any actual names and places without the written consent of all persons to be named. A ruling may be relied upon by the person who requested it whether or not published.

2. Charges Alleging Misconduct by an AICP Member: Any person may file in writing with the Executive Director of AICP a charge of misconduct against an AICP member. The charge shall state the facts upon which it is based. A person may file a charge anonymously. Anonymous filers shall have the option of designating an e-mail or post office address in the event they need to be contacted by the Executive Director. Persons who file charges anonymously shall not be sent notification as to the disposition of the charge, shall have no right to appeal if the charge is dismissed, and shall not be sent findings of fact, determinations and opinions of the AICP Ethics Committee. The Executive Director shall furnish a copy of the charge to the respondent member.

The Executive Director shall determine whether the charge warrants an investigation.

The Executive Director with or without an investigation may dismiss the charge or issue a complaint against the respondent. In either event, notice shall be sent to the charging party and to the respondent advising of the determination and of the charging party's right to appeal the dismissal of the charge.

The Executive Director's decision to dismiss a charge may be appealed by the charging party within thirty days of receipt of written notification. The Executive Director shall promptly forward copies of the appeal to the members of the AICP Ethics Committee. The Ethics Committee may remand the charge to the Executive Director for further investigation and/or reconsideration, or the Committee may reverse the Executive Director's decision if it is contrary to the provisions of the Code or to prior Committee opinions.

If the Executive Director issues a complaint against a member, the latter shall have thirty days from receipt of the complaint to respond. In the absence of extraordinary circumstances which, in the opinion of the Ethics Committee, warrant a special exception, the failure of a respondent to deny any fact alleged in the complaint within the thirty day period will be deemed an admission of such fact.

If the response to the complaint reveals any disputed material fact, the respondent shall be granted a hearing before the Ethics Committee of the AICP or before any member or members of the Ethics Committee designated by the Committee's Chair to conduct the hearing. The hearing shall proceed without application of formal rules of evidence; however, the substantive rights of the respondents shall at all times be protected.

If a hearing is held, those conducting it shall promptly issue findings of fact which shall be transmitted to the full Committee, the respondent and the charging party. If no material fact was in dispute and no hearing held, the Ethics Committee need not issue findings of fact.

On the basis of the findings of fact and admissions, the Ethics Committee shall determine whether the Code has been violated and issue an opinion. A copy of the opinion shall be transmitted to the respondent, the charging party and the Commission. The Ethics Committee may concurrently submit a recommendation to the Commission that the respondent be expelled, suspended, publicly censured, or privately reprimanded. The respondent shall be given no less than thirty days' notice to respond, in person and/or in writing before it is voted on by the Commission, which vote shall be within one year of the issuance of the complaint. Disciplinary action against a member and the official publication of an expulsion, suspension or public censure shall require the affirmative vote of two-thirds of the Commission.

The Executive Director shall publish all written opinions endorsed by the Commission or by the Ethics Committee, but shall omit actual names and places unless authorized by an affirmative vote of two-thirds of the Commission or in writing by the respondent.

# **AICP Advisory Rulings**

Ethics Advisories. The AICP Code of Ethics and Professional Conduct provides for advice by the executive director on specific problems and questions concerning ethical behavior by members. The AICP Ethics Committee asked that such advice be codified as advisory rulings specified by the code.

## **Advisory Ruling No. 1: Sexual Harassment**

Sexual harassment is unethical under the AICP Code of Ethics and Professional Conduct. Sexual harassment is also subject to penalty under law. The U.S. Equal Employment Opportunity Commission defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Two of the general principles in the Code are applicable to specific instances of harassment: Principle D (1) of the Code says that a planner must not commit a deliberately wrongful act which reflects adversely on the planner's professional fitness; and Principle D (2) of the Code says that a planner must respect the rights of others and, in particular, must not improperly discriminate against persons. Unlawful sexual harassment as defined by the EEOC is a deliberately wrongful act.

Respecting the rights of others, under the Code, requires a standard of behavior higher than that defined as coercive or intimidating by EEOC. Conduct that may not have illegal effect may nevertheless be harassment. Joking or bantering about sexual subjects, comments suggesting sexual attractiveness, and comments disparaging women or men or their abilities generally may constitute petty harassment. If any such behavior is found offensive, offended persons should so say. The offensive behavior becomes harassment if continued after the offenders is notified.

Negligence or omission on the part of an employer who is dismissive of a complaint of sexual harassment, and encourages the complainant to be tolerant of the offense is itself a form of harassment. So is a deliberately false accusation of sexual harassment.

Harassment is decidedly distinct from behavior occasioned when a genuinely mutual affection springs up between co-workers. (May 1988).

## **Advisory Ruling No. 2: Conflicts of Interest When a Public Planner has a Stake in Private Development**

The Code of Ethics and Professional Conduct addresses conflicts of interest in Principal B (3): "A planner must not, without the consent of the client or employer, and only after full disclosure, accept or continue to perform work if there is an actual, apparent, or reasonably foreseeable conflict between the interests of the client or employer and the personal or financial interest of the planner or of another past or present client or employer of the planner."

Conflicts of interest are reasonably foreseeable when a planner attempts to serve a real estate development client while also serving a public agency that may have a role in reviewing or approving projects of that client.

Inquiries from planners who contemplate combining activity in real estate business with public planning work have fallen into a pattern as have the responses:

Real estate is a popular investment, and planners, knowing a lot about it, are attracted to it.

"I have an opportunity to invest in a small development, but the proposal will come before my agency for approval. What do you advise?" Don't do it. There are other investment opportunities.

"What if it's put in my wife's name?" Your wife's financial interest is your financial interest and yours is hers.

"But, when it comes before us, I will exclude myself from the decision, and only other staff members will recommend on the proposal. I won't take part at all." Your colleagues work with you, know that your interests are involved, and can't eliminate the influence of your relationship with them, even if unexpressed.

"My influence really can be a positive one on the developer. I know what would be good for the public and can work for a good design." That's when your agency is there for, and that's why it has the power to review and approve.

"But what if I disclose everything to the director, and he gives his consent..." He shouldn't. I certainly would advise him not to.

"I will work for a broker in a neighboring jurisdiction across the state line. He doesn't have a license in that state." No, but some of his colleagues do. And some of the decisions affecting the broker's business are regional decisions involving both jurisdictions.

A code of ethics should not be a what-can-I-get-away-with code. It should not be tortured into loopholes and technicalities that would allow a person to be formally correct while ethically wrong. The AICP Code looks for "more than the minimum threshold of enforceable acceptability. It sets aspirational standards that require conscious striving to attain."

Developers can benefit from professional planning services and are just as entitled to fully conscientious advocacy of their interests as a public planning agency. A conflict of interest is inherent, however, in any assumption of both roles simultaneously.

There may also be a conflict when the roles overlap. A planner may move from employment by a public agency to employment by a private client. A conflict arises as soon as discussion is initiated for such a move. The public employer must, therefore, be notified promptly that such discussion has taken place whether or not it matures in a change of employment. This is decidedly earlier notice than is normal for a job change and it is notice of a change that may not take place. It is necessary, however, to guard against the substantial conflicts that would occur if a planner is in a position to influence the resolution of certain issues in public employ that will later affect the interests of a new, private employer.

Private planners and consultants who undertake work for a public agency, or change employment from private to public, must disclose any conflicts or potential conflicts to the public agency employer. (May 1988).

### **Advisory Ruling No. 3: Outside Employment or Moonlighting**

A planner's responsibility to an employer places significant restraints on accepting work for employers outside of the full-time commitments to the primary employer. A full-time member of a planning agency staff owes loyalty, energy and powers of mind primarily to its service.

The Principles in the Code that concern conflict of interest B(3) and using an office to seek special advantage B(7) must especially be applied.

A planning staff member must take no employment outside of official duties unless such employment creates no conflict with those duties either in the interests to be served or in competition for time and energy. If the planner decides that there will be no such conflicts, then outside employment must, in addition, receive the explicit approval of the employer.

No outside employment must be undertaken if its performance will reduce the quality or dispatch with which the staff member executes primary responsibilities. The number of hours and the scheduled times devoted to outside employment must not interrupt or interfere with the time that the primary responsibilities demand.

Outside employment must never deal with any matter that may require an action or recommendation by the primary employing agency. Neither must employment be taken with any person or organization that does business with any agency of the primary employer.

Public property must not be used for any private purpose including work that is performed for other employers.

Principle B (8) says that ``A planner must not accept ... work beyond the planner's professional competence or accept work which cannot be performed with the promptness required..." Since the

schedules, deadlines, priorities and unanticipated time demands of the primary employer must always take precedence, the volume of outside work must necessarily be small and an outside employer must be informed that prompt execution will not necessarily be satisfied. Both the planner requesting, and the authority giving, approval for outside employment should consider the main justification for approval is a demand for whatever special professional knowledge and experience the planner has that is not otherwise readily available. Service as a teacher or instructor is outside employment that is most justifiable and an unspecialized, general consulting practice least justifiable. (May 1988).

## **Advisory Ruling No. 4: Honesty in the Use of Information**

As professional givers of advice--advice that may affect the well-being of communities and individuals for many years--we have a special obligation to cherish honesty in the information that supports our advice.

Yet, many daily pressures do battle against honesty. We are pressed to be effective advocates for a community, a private client, an elected administration or a cause. A political agenda is often formed before dispassionate study; those who have campaigned for it then look with passion for studies to support. Decision-makers may demand a greater degree of certainty, or impose more rigorous criteria for decision, than the capability of analysis or sufficiency of data can satisfy.

The Code of Ethics and Professional Conduct is filled with prescriptions for honesty:

A-3) "provide full, clear and accurate information on planning issues to citizens and governmental decision-makers."

B-3) "only after full disclosure" (on conflicts of interest)."

B-5) "must not ... through use of false or misleading claims."

B-8) "must not accept ... work beyond the planner's professional competence."

C-1) "must protect and enhance the integrity of the profession."

C-2) "must accurately represent the qualifications, views and findings of colleagues."

D-4) "must accurately represent (one's own) professional qualifications, education and affiliations."

In some situations, planners must not provide full information. Planners frequently have the role of negotiators whose effectiveness depends on not disclosing final positions that are acceptable. And, as the Code points out, "the need to provide full public information may compete with the need to respect confidences." Information that is disclosed in such circumstances must, however, be honest and accurate.

It is part of professional conduct to communicate our ethical standards to clients, employers and the public. Communicating them early, before they need to be applied to a specific controversy, may erase pressures to abuse them.

There should be no need to explain what the code requires as full, clear and accurate information. Half-truths, deceptions and undocumented assertions don't pass. A half-truth is a whole lie. Don't cook the numbers.

There is also a positive duty on behalf of ethical treatment of information. In reporting the results of studies, planners must follow the scholar's rule of making it possible for others to follow in our footsteps and check our work. Document the sources of data. Report the statistical procedures used, what was done to bring the raw data into the form that is reported. What assumptions were made at different stages in the study?

Public decision-makers must often leap beyond the cautions and reservations of a careful study to achieve political solutions. Planners must take pains that our studies and recommendations are not wrongly interpreted, and that a clear distinction is made between factual findings and policy decisions. (March 1991).

### **Advisory Ruling No. 5: Certain Duties of Planners to Ensure Effective Enforcement of the Code of Ethics and Professional Conduct**

Principle C(1) of the Code of Ethics and Professional Conduct requires that a "planner must protect and enhance the integrity of the profession . . . The Code itself sets standards of behavior for planners and effective enforcement of Code provisions is essential to the integrity of the profession.

To achieve effective enforcement of the Code, the following behaviors are required by Principle C(1):

A planner who has certain knowledge of clearly unethical conduct on the part of the certified planner has a duty to file a charge of misconduct with the Executive Director. A corollary obligation is that a planner should never use the threat of filing an ethics charge relating to current or past misconduct in order to gain, or attempt to gain, an advantage in dealings with another planner.

A planner who desires to file a charge of misconduct has an obligation to do so pursuant to the Procedures Under the Code of Ethics and Professional Conduct. The charge would be transmitted only to the Executive Director who will then send a copy to the respondent. A planner should not make public allegations of Code violations against another planner, but rather should trust the processes of the Institute to determine if a violation has occurred and, if so, the sanctions to be applied.

A planner against whom a charge of misconduct has been filed has a duty to cooperate fully with the Executive Director and the Ethics Committee to ensure that all information which may be relevant to the charge (or Complaint) is made available. This includes an obligation to encourage others with relevant information, whether favorable to unfavorable, to cooperate, as well. The Ethics Committee may determine that allegations not admitted by the planner are proven if it finds that the planner has failed to fully cooperate at any point in the process.

A planner against whom a charge of misconduct has been filed has a duty not to retaliate in any manner against a person who filed the charge or cooperated in the investigation and/or resolution thereof. (January 1998)

## **Formal Advisory Ruling No. 6: Concerning disclosure of information gained in a professional relationship when there may be a violation of law.**

A planner is generally prohibited by Code B(9) from revealing "information gained in a professional relationship which the client or employer has requested to be held inviolate." However, one of the exceptions to the general rule permits disclosure "to prevent a clear violation of law... after the planner has verified the facts and issues involved and, when practicable, has exhausted efforts to obtain reconsideration of the matter and has sought separate opinions on the issue from other qualified professionals employed by the client or employer.

A planner who is expected by an employer not to make public disclosure of conduct that the planner, after verifying the facts and issues, views as clearly illegal is often faced with difficult personal choices. A planner who angers an employer by going public with such information is subject to retaliatory conduct, including direct or constructive termination, inferior pay and promotion treatment and other sanctions short of dismissal. In many situations, the planner's right to administratively or judicially appeal retaliatory conduct is limited or non-existent.

The planner facing such a dilemma should first consider whether it is practicable to try, as diplomatically as possible, to urge the employer to recognize that the conduct is illegal and should either be avoided or, if in the past, acknowledged and remedied. However, if the employer's past conduct indicates that such an effort will be unwelcome, the planner should avoid a confrontation with the employer and next consider whether it is practicable "to obtain separate opinions to verify the planner's conclusion from other qualified professionals employed by the same employer."

If the planner reasonably fears that the employer would retaliate upon learning of a possible challenge to its integrity, the planner may not deem it practicable to raise the matter with other professionals working for the same employer. This includes co-employed attorneys, who may feel a fiduciary duty to report immediately to the client employer upon learning of the planner's potential challenge to its conduct.

One option, not mentioned in the Code, is for the planner to consult with an unconflicted, personal attorney prior to concluding whether to go public with confidential information that could embarrass the employer. It would be desirable to seek the counsel of an attorney who has expertise in matters of public or private employment law and who is thus familiar with the rights and remedies available within the jurisdiction if the employer were to retaliate. And, even though attorneys, with narrow exceptions, are ethically barred from revealing client confidences, it may still be desirable to get advance assurance in writing from the attorney concerning non-disclosure. To hold down costs, the planner should prepare for the attorney a concise, confidential memorandum setting out the verified facts and issues so that the attorney can assist the planner more efficiently in determining the ethically required course of action.



In the final analysis, the planner may determine that the only ethical option is to go public with the information and face employer retaliation. It can only be hoped that in such situations available legal remedies furnish adequate protection and/or that a public outcry has a similar effect.

*October, 1999*